

Edward Reines/SV/WGM/US

12/04/2007 03:38 PM

To Carrie.Williamson@dlapiper.com

cc Mark.Fowler@dlapiper.com

bcc

Subject RE: NetApp/Sun -- Setting The CMC

Carrie,

Of course the March date is unacceptable. As Mark stated in his December 2 email, even Sun believes that a prompt CMC should be held in the 6053 case so as to not materially delay the progress of that case in light of the transfer. Further, the agreement was in fact to hold a prompt CMC as soon as the case arrived in the district. A prompt CMC was a critical part of the venue agreement and Judge Laporte knows about that agreement. Indeed, we asked the judge about a December CMC date in our teleconference to ensure there would be availability. We are not delighted that Sun's current position appears to be a somewhat cynical attempt to exploit an automatic order issuing from the clerk's office obtained after non-expeditious responses to our simple request to implement the parties' agreement.

I am available at 4 pm for a meet and confer on this issue. We plan to move swiftly so please be prepared to fully speak on behalf of Sun so we can complete the meet and confer today. We still hope to resolve this with a spirit of cooperation. Thanks much.

Best,

Ed

"Williamson, Carrie" <Carrie.Williamson@dlapiper.com>



"Williamson, Carrie"

<Carrie.Williamson@dlapiper.com>

12/04/2007 03:22 PM

To <edward.reines@weil.com>

cc "Fowler, Mark" <Mark.Fowler@dlapiper.com>

Subject RE: NetApp/Sun -- Setting The CMC

Hi Ed,

I just tried to call you to respond to your concerns below. As I'm sure you know, today's scheduling order in the 6053 case (the former Texas case) set the Initial Case Management Conference in that case for March 11, 2008. This date is acceptable to us, and we would propose holding the CMCs for both the 6053 case and the 5488 case on that date.

If you believe that this date is unacceptable, I'm available to discuss this afternoon. I have a phone call now, but I should be free at 4pm if you are free.

Thanks,  
Carrie

**From:** edward.reines@weil.com [mailto:edward.reines@weil.com]  
**Sent:** Tuesday, December 04, 2007 11:38 AM  
**To:** Williamson, Carrie  
**Cc:** Fowler, Mark  
**Subject:** RE: NetApp/Sun -- Setting The CMC

Thanks, I must have inadvertently erased your vmail before hearing it. Sorry for any confusion. We look forward to your response by this evening. We are eager not to make a unilateral request for the prompt CMC we had agreed upon in the 6053 case. Best, Ed

"Williamson, Carrie" <Carrie.Williamson@dlapiper.com>

12/04/2007 11:33 AM  
To <edward.reines@weil.com>, "Fowler, Mark"  
<Mark.Fowler@dlapiper.com>  
cc  
Subje RE: NetApp/Sun -- Setting The CMC  
ct

Hi Ed,

Thanks for your email and your voicemail message. As I said in my voicemail message to you last night, we cannot talk with our client representative until this afternoon. Moreover, Mark is in a client meeting all day today. We will get back with you as soon as we can, but it may not be until this evening.

Thanks,  
Carrie

**From:** edward.reines@weil.com [mailto:edward.reines@weil.com]  
**Sent:** Tuesday, December 04, 2007 9:13 AM  
**To:** Fowler, Mark  
**Cc:** Williamson, Carrie  
**Subject:** RE: NetApp/Sun -- Setting The CMC

Mark,

Sorry we were not able to connect, but I had a productive conversation with Carrie.

The gist from our perspective is that we are eager to get back to the Court about a CMC date in the 6053 case. We had discussed with Judge Laporte a prompt CMC date and I think our proposal for a January 8 date, while not as soon as it could be, is reasonable. We would be concerned about going much beyond that given our specific agreement to arrange a prompt CMC.

In response to your inquiry, we do plan to file counterclaims in the 5488 case, although I cannot now specify the total number of patents that will be included. I agree with you that this makes a January CMC impractical. While there is nothing special about the specific date March 24 Judge Ware set for the CMC, I agree that a March date would be fine for that case. As for the associated 26(f) and patent rules dates, I'm sure we can work out any kinks, or accommodate any scheduling concerns, but in the first instance I would think the default rules could apply.

We are eager to get back to the Court regarding the CMC date in 6053. We asked the Court if a prompt date could be accommodated, including in December and we received a favorable response. At this point I think we should get back to the Court promptly with a date, preferably one upon which we agree.

Best,

Ed

"Fowler, Mark" <Mark.Fowler@dlapiper.com>

12/02/2007 02:26 PM

To <edward.reines@weil.com>  
cc "Williamson, Carrie" <Carrie.Williamson@dlapiper.com>  
Subject RE: NetApp/Sun -- Setting The CMC

Ed,

I think the Texas case may have "hit" the California docket. The case filed before Judge Ware, now before Judge LaPorte, is case no. 3:07-cv-05488 EDL, and is Sun v. NetApp. The case I saw in Friday's report has a different number, 3:07-cv-06053 EDL, and is NetApp v. Sun. If the Texas case has hit, we'll need to reflect that in our CMC filing. I assume we can make this determination on Monday.

In the meantime, I have some comments and questions:

1. We agreed to a prompt CMC in the Texas case, so as to not materially delay the progress of that case in light of the transfer. The draft CMC filing you prepared is in the California-filed case, and would advance the initial CMC in that case from March 24 (the date previously set by Judge

Ware) to early January. We did not agree to accelerate the CMC in the California-filed case, although I am not completely opposed to this in concept, provided we have a common understanding as to what we plan to achieve at an earlier conference, as discussed below.

2. Does NetApp intend to file counterclaims in the California-filed action (other than declaratory relief counterclaims on the patents asserted by Sun)? Whether or not NetApp plans to do so impacts whether an early January CMC makes sense for that case.

3. What do you have in mind in terms of the parties' Rule 26(f) conference in the two cases, including when discovery can begin, in relation to the date of the initial CMC? For example, did you have in mind we would complete our Rule 26(f) conference in one or both cases in shortly and begin discovery later this month?

4. What do you have in mind in terms of the application of the Patent Local Rules in relation to this early CMC? For example, did you have in mind the parties would meet and confer before the CMC to propose a schedule to the Court at the CMC for the disclosures identified in the Patent Local Rules, and to discuss that proposal with the Court (or competing proposals if the parties are unable to agree on a joint proposal), or, instead, did you have in mind that the parties' disclosure obligations would be automatically triggered off the CMC so that, for example, NetApp would serve its PICs on Sun 10 days after the CMC?

Please let me know your thoughts on these points to make sure we are on the same page in terms of what needs to be accomplished before and at the initial CMC.

Thanks.

Mark

**From:** edward.reines@weil.com [mailto:edward.reines@weil.com]  
**Sent:** Saturday, December 01, 2007 4:31 PM  
**To:** Fowler, Mark  
**Cc:** Williamson, Carrie  
**Subject:** Re: NetApp/Sun -- Setting The CMC

Mark, I saw that too. We did not file a new case. The case number for that entry is the same as that for the case you filed that was assigned to Judge Ware and it simply appears to be the reassignment of that case to Judge Laporte.

----- Original Message -----

**From:** "Fowler, Mark" [Mark.Fowler@dlapiper.com]  
**Sent:** 12/01/2007 04:18 PM PST  
**To:** Edward Reines  
**Cc:** "Williamson, Carrie" <Carrie.Williamson@dlapiper.com>  
**Subject:** RE: NetApp/Sun -- Setting The CMC

Ed,

I saw a list of new filings in the N.D. Cal for Friday. It shows a NetApp v. Sun case before Judge Laporte. Did NetApp file a new case against Sun, or is this the transfer of the Texas action? ECF-PACER for the N.D. Cal has been down so far today, so I have not been able to determine independently.

Mark

**From:** edward.reines@weil.com [mailto:edward.reines@weil.com]  
**Sent:** Saturday, December 01, 2007 12:30 PM  
**To:** Fowler, Mark  
**Cc:** Williamson, Carrie  
**Subject:** Re: NetApp/Sun -- Setting The CMC

Thanks for the update.

----- Original Message -----

**From:** "Fowler, Mark" [Mark.Fowler@dlapiper.com]  
**Sent:** 12/01/2007 12:19 PM PST  
**To:** Edward Reines  
**Cc:** "Williamson, Carrie" <Carrie.Williamson@dlapiper.com>  
**Subject:** RE: NetApp/Sun -- Setting The CMC

Ed,

I was not in the office yesterday, but have now read your email and listened to your from yesterday. I will send you a substantive response later today.

Mark

**From:** edward.reines@weil.com [mailto:edward.reines@weil.com]  
**Sent:** Saturday, December 01, 2007 12:09 PM  
**To:** Fowler, Mark  
**Subject:** Re: NetApp/Sun -- Setting The CMC

Mark, just a friendly reminder. I want to make sure that you received this email from me as I have held off in responding to the Court until I hear from you. Thanks, Ed

Edward Reines/SV/WGM/US

11/30/2007 12:07 PM

To mark.fowler@dlapiper.com  
cc  
Subject NetApp/Sun -- Setting The CMC

Mark,

I received a call from Judge Laporte's Chambers asking us for the date we want to hold the CMC pursuant to our request for a prompt CMC when you and me spoke to Judge Laporte by teleconference. I think it will be helpful to submit a stipulation to the Court on this subject so we explain the status of the Texas case in setting the CMC. Attached is a draft. Please let me know if this is acceptable. I would like to be responsive to the Court and submit this today if possible. Thanks in advance.

Best,

Ed

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Thank you.

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